

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MAURICE L. COLEMAN SR.,

Plaintiff,

V.

**KIMBERLY BUNJER, U.S. Attorney,
DOUGLAS COUNTY PROSECUTORS
OFFICE, OMAHA POLICE DEPT,
ARTHUR (BOBBY) BRUMFIELD,
Officer, JULIE A. FRANK, Att., Public
Defender, and TIM BURNS,**

Defendants.

CASE NO. 8:08CV528

MEMORANDUM AND ORDER

Plaintiff filed his Complaint in this matter on December 3, 2008. (Filing No. [1](#).) Plaintiff has previously been given leave to proceed in forma pauperis. (Filing No. [9](#).) The court now conducts an initial review of the Complaint to determine whether summary dismissal is appropriate under [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#).

I. SUMMARY OF COMPLAINT

Plaintiff's Complaint names six Defendants, including the Omaha Police Department, the Douglas County Prosecutors Office, attorney Kimberly Bunjer, and three other individuals. (Filing No. [1](#) at CM/ECF p. 1.) Plaintiff is currently confined in Leavenworth, Kansas. (*Id.*)

Condensed and summarized, Plaintiff alleges that his attorneys in Case No. 8:07CR211 provided ineffective assistance of counsel because they engaged in a “deceptive cover up[]” and misled him. (*Id.* at CM/ECF pp. 2, 4.) Plaintiff also alleges that Defendants “manipulated evidence . . . throughout the entire process” of his criminal prosecution. (*Id.* at CM/ECF p. 3.) Plaintiff alleges that due to this manipulation he

entered into “a plea agreement that [he] would not have accepted” otherwise. (*Id.*) Plaintiff seeks monetary compensation of an “unknown” amount. (*Id.* at CM/ECF p. 9.) In addition, Plaintiff asks the court to “vacate [his] conviction.” (*Id.*)

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. See [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

Therefore, where a pro se plaintiff does not set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible, their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly](#), 127 S. Ct. 1955, 1974 (2007) (overruling [Conley v. Gibson](#), 355 U.S. 41 (1967), and setting a new standard for failure to state a claim upon which relief may be granted). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. See [Martin v. Sargent](#), 780 F.2d 1334, 1337 (8th Cir. 1985). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab.](#), 294 F.3d 1043, 1043-1044 (8th Cir. 2002) (citations omitted).

Liberally construed, Plaintiff here alleges federal constitutional claims. To state a claim under [42 U.S.C. § 1983](#), a plaintiff must allege a violation of rights protected by the

United States Constitution or created by federal statute and also must show that the alleged deprivation was caused by conduct of a person acting under color of state law. [*West v. Atkins*, 487 U.S. 42, 48 \(1988\)](#); [*Buckley v. Barlow*, 997 F.2d 494, 495 \(8th Cir. 1993\)](#).

III. DISCUSSION OF CLAIMS

Claims relating to the validity of an individual's incarceration may not be brought in a civil rights case, regardless of the relief sought. As set forth by the Supreme Court in [*Preiser v. Rodriguez*, 411 U.S. 475 \(1973\)](#) and [*Heck v. Humphrey*, 512 U.S. 477 \(1994\)](#), if success on the merits of a civil rights claim would necessarily implicate the validity of a conviction or continued confinement of a convicted state prisoner, the civil rights claim must be preceded by a favorable outcome in habeas corpus or similar proceedings in a state or federal forum. Absent such a favorable disposition of the charges or conviction, a plaintiff may not use [42 U.S.C. § 1983](#) to cast doubt on the legality of his conviction or confinement. See [*Heck*, 512 U.S. at 486-87](#).

Here, Plaintiff's claims relate to his counsels' ineffectiveness during his criminal case, Case No. 8:07CR211. These claims necessarily implicate the validity of Plaintiff's conviction and incarceration. In fact, Plaintiff specifically asks the court to "vacate [his] conviction." (Filing No. [1](#) at CM/ECF p. 9.) As set forth above, the court cannot address these claims in an action brought pursuant to [42 U.S.C. § 1983](#). However, the court will dismiss Plaintiff's claims without prejudice to reassertion in a habeas corpus or similar proceeding.¹

¹ The court notes that Plaintiff has filed a Motion to Vacate under 28 U.S.C. 2255 in Case No. 8:07CR211. (Case No. 8:07CR211, Filing No. [101](#).) Thus, it appears that Plaintiff is already pursuing his claims in a separate post-conviction relief motion.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (Filing No. 1) is dismissed without prejudice to reassertion in accordance with this Memorandum and Order; and
2. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 26th day of February, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge